

REMARKS/ARGUMENTS

This application has been reviewed in light of the Decision on Appeal mailed on October 10, 2008. Claims 1-27 are pending in the application with Claims 6 and 9-20 being previously withdrawn from consideration and with Claims 1 and 21-23 being in independent form. Claims 1 and 21-23 have been amended by the present amendment. Claims 24-27 have been added by the present amendment. In view of the amendments and remarks to follow, allowance of this application is respectfully requested.

In the Decision on Appeal, Board of Appeals affirmed the Examiner's rejection of Claims 1-5, 7, 8, and 21-23 as being obvious over U.S. Patent No. 6,932,816 to Phan ("Phan") and U.S. Patent No. 6,086,586 to Hooven ("Hooven").

Claim 1 has been amended herein to require a tissue or vessel sealing instrument comprising, *inter alia*, "each of the electrodes including a planar tissue-contacting surface disposed transverse to the longitudinal axis." Figure 3 of Applicants' disclosure, reproduced below, supports this recitation.

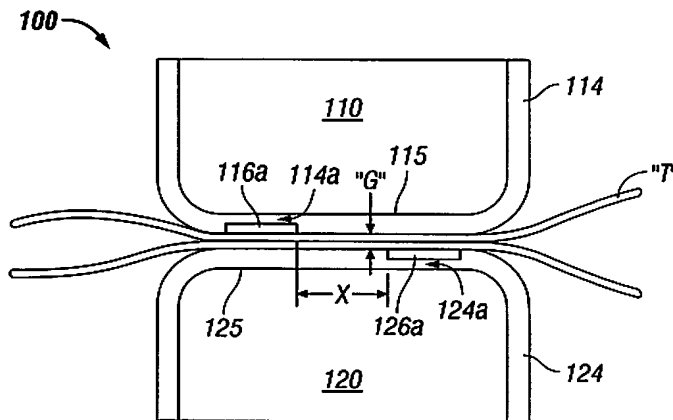
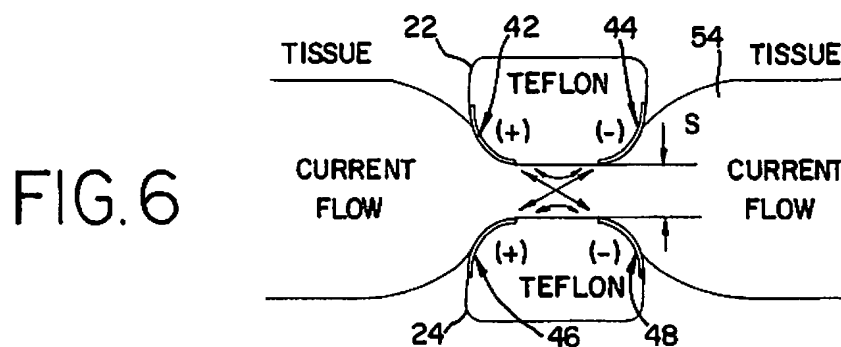
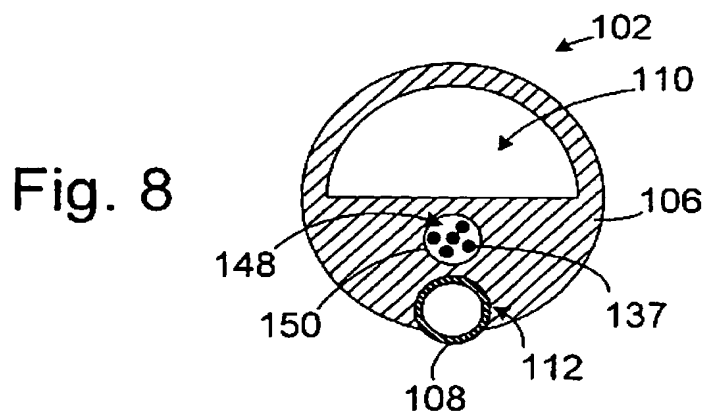


FIG. 3

Neither Phan nor Hooven discloses a tissue or vessel sealing instrument comprising, *inter alia*, "each of the electrodes including a planar tissue-contacting surface disposed transverse to the longitudinal axis." For example, see Figure 8 of Phan (reproduced below) and Figure 6 of Hooven (reproduced below). Specifically, the tissue-contacting surface disposed transverse to the longitudinal axis of the electrodes of Phan (108) and Hooven (42, 44, 46, 48) are curved, i.e., not planar.



Accordingly, for at least these reasons, Applicants respectfully request allowance of Claim 1, and Claims 2-5 and 7-8, which depend from Claim 1.

With respect to Claim 21, in the Decision on Appeal, it was stated that “claim 1 does not recite the word ‘encompass’ regarding the relationship between the base member and the electrode. Accordingly, Applicants have amended Claim 21 herein such that Claim 21 requires a tissue or vessel sealing instrument comprising, *inter alia*, “each of the elastomeric materials encompassing an electrode therein.” Neither Phan nor Hooven discloses a tissue or vessel sealing instrument comprising, *inter alia*, “each of the elastomeric materials encompassing an electrode therein.” For at least this reason, Claim 21 is allowable over the art of record.

With respect to Claim 22, in the Decision on Appeal, it was stated that “While Appellants may be correct that Hooven results in non-uniform temperature distribution, there is no limitation in claim 1 which requires any particular temperature distribution.” Accordingly, Applicants have amended Claim 22 herein such that Claim 22 requires a tissue or vessel sealing instrument comprising, *inter alia*, “wherein the offset distance X is configured to result in a substantially uniform temperature distribution between the electrodes after activation of the electrodes.” For at least this reason, Claim 22 is allowable over the art of record.

With respect to Claim 23, in the Decision on Appeal, it was stated that in Phan, “The electrode 108 is nearly flush with the elastomeric material 106 and when compressible tissue is grasped between electrodes 108 on the facing jaws, the elastomeric material 106 will contact that compressed tissue.” Accordingly, Applicants have amended Claim 23 herein such that Claim 23 requires a tissue or vessel sealing instrument comprising, *inter alia*, “the tissue-contacting surface of each of the electrodes is flush with a tissue-contacting surface of its corresponding elastomeric

material prior to the jaw members being closed about tissue.” For at least this reason, Claim 23 is allowable over the art of record.

Claims 24-27 have been added to further define over the art of record.

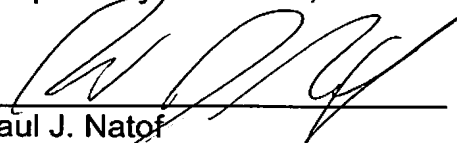
CONCLUSION

In view of the foregoing, it is respectfully submitted that all claims presently pending in the application, namely Claims 1-5, 7-8 and 21-27, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants’ undersigned attorney at the Examiner’s convenience.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

Respectfully submitted,



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